IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1415 OF 2005.

Savalaram Jagannath Chavan & ors. ... Appellants.
Versus.
Vishwanath Savalaram Chavan & others.... Respondents.

Shri G.N.Salunke i/by Shri M.D.Pokale for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 23rd MARCH, 2006.

P.C.:

1. Heard Shri Salunke for the Appellants. The Appellants are the original Defendants Nos.1 to 8. The suit filed by the original Plaintiff for partition and separate possession has been partly decreed. The suit is dismissed as regards some of the properties.

2. The learned Counsel appearing for the Appellants submitted that even the Appellate Court has accepted that the parties were in separate possession of different properties and that for all purposes there was a separation between the parties. He submitted that in view of this accepted fact, the Courts below committed a serious error in no accepting the case that there was a prior partition.

3. I have considered the submission. Both the Courts below have considered oral and documentary evidence on record have the discarded the case made out by the Appellant. It is well settled that mere separate

possession and separate enjoyment of properties by the members of the family is not a proof of partition. Several factors have been considered by both the Courts below including the entries in the revenue records. The case of the Appellants was that there was a partition effected in the year 1970. The Appellate Court has found that in the year 1977 an entry was made of the name of Defendant No.1 (Appellant No.1) in respect of the suit property by describing him as karta of joint Hindu family.

4. The findings recorded by the Courts below are based on oral and documentary evidence on record. In such a case, no interference is permissible under section 100 of the Code of Civil Procedure, 1908.

Second Appeal is rejected.

Judge.